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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,251	08/28/2001	Dwip N. Banerjee	AUS920010507US1	5907

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EXAMINER

HARRIS, CHANDA L

ART UNIT PAPER NUMBER

3714

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/941,251	<b>Applicant(s)</b> BANERJEE ET AL.	
	<b>Examiner</b> Chanda L. Harris	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

In response to the Amendment filed 9/15/04, Claims 1-50 are pending.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3, 6, 9-12, 14-15, 17-25, 28-29, 32-35, 37-38, 40-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto (US 6,755,661) in view of Hansel (US 3,292,276).**

1. [Claims 1,11,23,28-29,34,47]: Regarding Claims 1,11, 23, 28-29, 34, and 47, Sugimoto discloses identifying presentation of the test questions on the data processing system. See Col.9: 43-48. Sugimoto discloses responsive to the presentation of the test questions on the data processing system, monitoring test question timing data in which the test question timing data represents an elapsed time since an answered question from the test has been presented, wherein the elapsed time is an amount of time in attempting to answer a test question (i.e., time period from the display of the test question). See Col.10: 3-5. A bus system, a communications unit connected to the bus system, a memory connected to the bus system, wherein the memory includes a set of

instructions, and a processing unit connected to the bus system would have been inherent features of Sugimoto's invention as they are key components in any network-based system. A controller and at least one interface coupled to the controller would have been inherent features of Sugimoto's invention, especially in light of Col.9: 43-48.

Sugimoto does not disclose expressly generating an alert after the test question timing data exceeds a threshold, wherein the alert apprises a test taker that the elapsed time is excessive for the test question or alerting a remotely located user when the test question timing data exceeds a predetermined threshold (i.e., too slow). However, Hansel teaches such (i.e., a signal indicating that the operator has taken too long to answer the question) in Col.2: 62-72. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate generating an alert after the test question timing data exceeds a threshold, wherein the alert apprises a test taker that the elapsed time is excessive for the test question into the method and system of Sugimoto, in light of the teaching of Hansel, in order to indicate that the test-taker has taken too long to answer the question.

2. [Claims 2-3, 24-25,48]: Regarding Claims 2-3, 24-25, and 48, Sugimoto discloses wherein the monitoring step is performed by a proctor device or a program on the data processing system (i.e., applet) and wherein the program is an applet. See Col.10: 3-5.

3. [Claims 6,46]: Regarding Claims 6 and 46, Sugimoto discloses administering a test to a remotely located user of a client device. See Col.9: 43-48. Sugimoto discloses receiving test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer

a test question from a plurality of test questions that are to be provided to the client device during administration of the test; and outputting the test question timing data to a proctor device (i.e., applet, time watching program) such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user. See Col.10: 1-6.

4. [Claims 9,32]: Regarding Claims 9 and 32, Sugimoto discloses sending an instant message (i.e., a time period from the display of the test question) to the client device. See Col.10: 3-5.

5. [Claims 10,33]: Regarding Claims 10 and 33, Sugimoto discloses receiving an instant message (i.e., answer) from the client device. See Col.10: 14-23.

6. [Claims 12,35]: Regarding Claims 12 and 35, Sugimoto discloses storing a score for the test in a permanent storage (i.e., test history database). See Col.7: 1-3, 22.

7. [Claims 14,37]: Regarding Claims 14 and 37, Sugimoto discloses receiving a request for administration of the test to the remotely located user (Col.8: 63-Col.9: 42) and establishing a session identification (e.g., a test time) for the administration of the test to the remotely located user; and correlating the test question timing data to the administration of the test to the remotely located user based on the session identification (Col.9: 43-Col.10: 23).

8. [Claims 15,38]: Regarding Claims 15 and 38, wherein the session identification includes a proctor device identifier, and wherein outputting the test question timing data to the proctor device is based on the proctor device identifier would have been an

inherent feature of Sugimoto's invention as there has to be some way to identify where the timing information is to be recorded/analyzed/processed.

9. [Claims 17,40]: Regarding Claims 17 and 40, Sugimoto discloses monitoring the test question timing data for evidence of greater than expected time (i.e., over the time limit set for the output question) to the test question. See Col.10: 57-63.

Sugimoto does not disclose expressly wherein outputting the test question timing data to a proctor device is performed in response to determining that evidence of greater than expected response time to the test question is present. However, Hansel teach such (i.e., "too slow") in Col.2: 53-62. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into the method and system of Sugimoto, in light of the teaching of Hansel, in order to indicate that a test-taker has taken too long to answer the question.

10. [Claims 18,41]: Regarding Claims 18 and 41, Sugimoto discloses wherein monitoring the test question timing data for evidence of greater than expected response time (i.e., over the time limit set for the output question) to the test question includes comparing previously received test question timing data to currently received test question timing data to determine if a change in the test question timing data indicates evidence of greater than expected response time to the test question. See Col.10: 57-61.

11. [Claims 19-21, 42-44]: Regarding Claims 19-21 and 42-44, Sugimoto does not disclose expressly generating an alert profile for the remotely located user based on at

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least one of a data profile associated with the remotely located user (e.g., time for user to answer the question), an examination timing database, and a degree of difficulty associated with a question on the test; transmitting an alert (e.g., "too slow") to the remotely located user based on the generated alert profile; and storing a response (i.e., recording) from the remotely located user to update the alert profile for use in future tests. However, Hansel discloses such in Col.2: 53-Col.3: 5. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into the method and system of Sugimoto, in light of the teaching of Hansel, in order to provide an indication of progress to a user. A recitation such as "for use in future tests" is directed to the manner in which a claimed method/apparatus is intended to be used and does not distinguish the claimed method/apparatus from the prior art if the prior art has the capability to so perform. See MPEP 2114 and *Ex parte Masham*, 2 USPQ2d 1647 (1987).

12. [Claims 22,45]: Regarding Claims 22 and 45, Sugimoto discloses storing of the timing data for the test question. See Col.7: 23-40. A recitation such as "to update timing data for the remotely located user for use in future test" is directed to the manner in which a claimed method/apparatus is intended to be used and does not distinguish the claimed method/apparatus from the prior art if the prior art has the capability to so perform. See MPEP 2114 and *Ex parte Masham*, 2 USPQ2d 1647 (1987).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 4, 7, 13, 26, 30, 36, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto/Hansel as applied to Claims 1,23, 29 and 47, above, and further in view of Walker (US 6,093,026).**

1. [Claims 4,26,49]: Regarding Claims 4, 26, and 49, Sugimoto/Hansel does not disclose expressly billing a client for monitoring the presentation of test questions (i.e., billing information). However, the concept of billing a client for providing a service is old and well known in the art. Walker teaches this concept in Col.4: 30-40. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate into the method and system of Sugimoto/Hansel billing a client for monitoring the presentation of test questions, in light of the teaching of Walker, in order to charge the client for tests conducted on its behalf. A recitation such as "for monitoring the presentation of the test questions" is directed to the manner in which a claimed method/apparatus is intended to be used and does not distinguish the claimed method/apparatus from the prior art if the prior art has the capability to so perform. See MPEP 2114 and *Ex parte Masham*, 2 USPQ2d 1647 (1987).

2. [Claims 7,30]: Regarding Claims 7, and 30 Sugimoto/Hansel does not disclose expressly billing a test developer (i.e., client) for administration of the test to the



remotely located user. However, Walker teaches such in the Abstract and in Col.4: 33-39. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate billing a test developer for administration of the test to the remotely located user into the method and system of Sugimoto/Hansel, in light of the teaching of Walker, in order to charge the client for tests conducted on its behalf.

3. [Claims 13,36]: Regarding Claims 13 and 36, Sugimoto/Hansel does not disclose expressly wherein the test is developed by a test developer and wherein the method is implemented by a test administration system that is operated by a different entity from the test developer. However, Walker teaches such in Col.4: 33-47. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into the method and system of Sugimoto/Hansel, in light of the teaching of Walker, in order to enable a test administration system to conduct test on the test developer's behalf.

**Claims 5, 8, 16, 27, 31, 39, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto/Hansel.**

1. [Claims 5,16,27,39,50]: Regarding Claims 5,16, 27, 39, and 50, Sugimoto/Hansel does not disclose expressly storing an identification of a number of test takers for the test takers for the test and billing a client based on the number of test takers for the test. However, the concept of billing a client based on the quantity of a product or services provided to the client is an old and well known in the art. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate

storing an identification of a number of test takers and billing a client based on the number of test takers into the method and system of Sugimoto/Hansel in order to enable a supplier to receive payment for services/products provided to the client.

2. [Claims 8,31]: Regarding Claims 8 and 31, Sugimoto/Hansel does not disclose expressly billing the remotely located user for administration of the test. However, such is old and well known in the art (e.g., computerized SAT, Greening, etc.). Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate billing a remotely located user for administration of a test into the method and system of Sugimoto/Hansel in order to collect payment for providing testing services.

#### ***Citation of Pertinent Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Johnson, III et al. (US 5,700,149)  
-elapsed time measurements for grading

#### ***Response to Arguments***


Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. See rejection above. Examiner regrets the delay in the citation of the ground(s) of rejection. This action is made NON-FINAL.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 571-272-4448. The examiner can normally be reached on M-F 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jessica Harrison can be reached on 571-272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Chanda L. Harris  
Primary Examiner  
Art Unit 3714